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Legal Regulations and Implications of Building Use Rights on Land Management Rights for Public Assets

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Abstract : This article is entitled the regulation and legal implications of building use rights over land management rights for public assets. Using legal research methods with normative research types, using *statute research approaches* and *conceptual approaches*. With the results of the analysis, the regulation regarding HGB above HPL has undergone changes which were previously regulated in PP No. 40 of 1996 concerning Cultivation Rights, Building Use Rights and Use Rights are now regulated in PP No. 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration. Conformity of HGB above HPL regulations in PP No. 18 of 2021 with the UUPA it can be said that there is no synchronization and harmonization, where in the UUPA the procedures for extending and renewing HGB must be carried out in stages and according to requirements, the land is still used and utilized properly according to the circumstances, nature and the purpose of granting rights and must obtain approval from the HPL holder. Even though in the provisions of PP no. 18 of 2021 also determines the same thing, but the provisions of Article 41 paragraph (3), especially for HGB, allow that after being granted SLF, rights can be extended and renewed.

Keywords: *Settings, Implications, HGB, HPL*

INTRODUCTION

One of the government's instruments for regulating society is a permit, a permit is an approval from the authorities based on a law or government regulation, to deviate from the provisions of statutory prohibitions in certain circumstances. Permits are used by the government as an instrument to influence relations with citizens so that they want to follow the methods they recommend in order to achieve a concrete goal. In order to achieve a concrete goal, permits as a government instrument require special authorities in their use, so that the government cannot use them without limits and without conditions. For this reason, licensing implementation must be based on general principles of good governance (AUPB). (Haryati et al., 2012)

National land management policy in Indonesia is regulated by Law Number 5 of 1960 concerning Basic Agrarian Regulations (hereinafter referred to as UUPA). The basis for promulgating UUPA as national land law is Article 33 paragraph (3) of the 1945 Constitution

of the Republic of Indonesia (hereinafter referred to as UUDNRI 1945) (Kawuryan & Arif, 2019) which reads: "The earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." Before the UUPA, Indonesian land law adhered to regulatory dualism, namely colonial law and customary law. The enactment of UUPA ends the dualism of national land regulation. The existence of changes in land law regulations in Indonesia which are essential in nature is a characteristic of the UUPA and revokes previous regulations regarding land which became regulations of the Dutch East Indies Government. The state has the authority to regulate affairs in the land sector. Article 2 paragraph (2) UUPA is a form of state delegation to government administrators to regulate all issues related to land in Indonesia (Aji et al., 2021)

The meaning of "control by the state" as stated in Constitutional Court Decision Number 01/PUU-I/2003 includes 5 (five) aspects, namely implementing policies (*beleid*), management actions (*bestuursdaad*), regulations (*regelendaad*), management (*beheersdaad*), and supervision (*toezichthoudensdaad*) all of which are carried out for the greatest prosperity of the people (Prasetya, 2018). Public control rights over land are the State's control rights over land, while private land control rights are land rights (Santoso, 2012). The underlying conception and content of the UUPA must be in accordance with the demands of the times and stated in the considerations Implementing regulations are needed to function as a complement and perfect the substance of national land law which must be in line with the basic principles in the 1945 Constitution of the Republic of Indonesia and the UUPA, because the UUPA only regulates land affairs in basic terms. Land rights are regulated in the UUPA. Land rights mean the right to grant authority and use land that has been given to a person or individuals and legal entities. The purpose of land use is in principle to fulfill two uses of land, namely to build something and to be cultivated by someone (Rongiyati, 2014).

Land rights in Article 16 paragraph (1) of the UUPA consist of various types, but in this research we will focus on discussing Building Use Rights (HGB). The meaning of HGB in Article 35 of the UUPA is as follows: "the right to construct and own buildings on land that is not one's own, for a maximum period of 30 years". HGB can basically be granted over Management Rights (HPL). This refers to Government Regulation Number 40 of 1996 concerning Business Use Rights, Building Use Rights and Land Use Rights (hereinafter referred to as PP No. 40 of 1996) Article 21 which states that HGB can be granted on (1) State Land. (2) Land Management Rights. (3) Freehold Land. The HPL element comes from "the right to control from the State" and "the authority to implement it is partially delegated to the holder," so that "the right to control from the State" does not mean "to have", but "only gives authority to the State" as the ruling organization of the Indonesian nation. The term HPL is taken from the Dutch *Beheersrecht*, which means the Right of Control, which means that the Right to Control the State can be interpreted as a legal relationship in real control over an object and to be used or exploited for individual interests. Granting HGB above HPL has consequences, if the holder of HGB above HPL wants to take legal action such as extending the term, encumbrances, transfers and juridical changes to land rights, this must be done with the approval of the Management Rights holder. The HGB period is above the HPL based on Article 25 PP No. 40 of 1996, the period given for HGB above HPL is 30 years, the longest period is given and can be extended for a maximum period of 20 years. The enactment of Law No. 6 of 2023 concerning Job Creation (hereinafter referred to as UUCK) especially refers to Article 129 paragraph (3) providing changes to the process of obtaining HGB periods above HPL where HGB holders obtain a Functional Worthy Certificate for granting extensions and renewals. rights to HGB above HPL. There are changes regarding the procedures for regulating the extension of the HGB period above the HPL in the UUCK where the extension and renewal of the right to use SLF is granted. The issuance of a

Functional Worthy Certificate (hereinafter referred to as SLF) based on Article 129 paragraph (3) UUCK given to the right holder is deemed to mean that the land is ready to be operated and utilized while providing extension and renewal of the HGB given without delay or immediately. In PP Number 40 of 1996 as the implementing regulation of the UUPA, it is emphasized that there is no SLF provision for extending and renewing HGB above HPL because the extension of the term and renewal of rights must be carried out sequentially, not in batches, so that when the UUCK was issued, the existing policy UUCK can be said to only focus on investment areas within economic zones such as Special Economic Zones. Thus, it is necessary to study how the time period is set and the appropriateness of setting the time period extension HGB above HPL ?

METHOD

The technique for writing this article uses legal research methods with normative research types, using *statute approaches* and *conceptual research approaches*. As for secondary data sources, namely using primary legal materials in the form of regulations that are relevant to legal issues, and secondary legal materials which are legal opinions and theories that are relevant to the legal issues in this writing. The data collection technique used is using a documentation guide from secondary data sources. This writing uses descriptive analysis techniques with deductive thinking methods. *approaches*

RESULTS AND DISCUSSION

State policy almost always influences legal development and creation of new laws (Gunanegara, 2022). Soil is an important factor in human life. In the agrarian scope, land is a part of the earth called the earth's surface. Land is intended to regulate one of its aspects, namely in a juridical sense called Rights (Kusuma, 2019). The UUPA regulates land rights, one of which is regarding HGB provisions which are specifically regulated in Articles 35 to Article 40 of the UUPA. Furthermore, Article 50 UUPA paragraph (2) states: "That further provisions regarding Business Use Rights, Building Use Rights, Use Rights, and Building Rental Rights are regulated by statutory regulations." The legal regulations mentioned in Article 50 paragraph (2) of the UUPA are PP 40 of 1996 (Estidina, 2019). However, after the enactment of the UUCK, this government regulation has been revoked and replaced with PP Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration. Arrangement and extension of the HGB period over Management Rights regulated in: (1) Law no. 5 of 1960 concerning Basic Agrarian Regulations. (2) Law no. 6 of 2023 Concerning Job Creation. (3) PP No. 18 of 2021 concerning Management Rights, Land Rights, Flat Units and Land Registration (Dewi, 2021).

The main factor that is a problem in HGB is the existence of two legal statuses that burden it, on the one hand the land has the status of state/regional property in the form of land, on the other hand the land has the status of land with management rights (Setionurjaya & Tyas, 2018), resulting in there is a dualism in the regulations governing it, in the land aspect management rights are subject to the regulations in Law Number 6 of 2023 Jo. PP Number 18 of 2021, on the other hand, the aspect of state/regional property in the form of land is subject to regulations in Law Number 1 of 2004 concerning State Treasury Jo. PP Number 28 of 2020 (Dinur Zulfikar et al., 2022).

The nature of the HPL is that it is a public authority, so that the HPL is not a right to land, but is a possession of the State's Control Rights. HPL is "part" of State Control Rights (HMN) whose authority is (partly) delegated to HPL holders (Silviana, 2017). The authority of the HPL holder in this case is a public authority, this can be seen from the contents of the Minister of Home Affairs Regulation No. 5 of 1974 concerning Provisions Regarding the

Provision and Grant of Land for Company Needs (Herliani et al., 2019) , in Article 3 determines that the HPL Holder is given the authority to: (a) Plan the designation and use of the land concerned; (b) Use the land for the purposes of carrying out its business; (c) Hand over parts of the land to third parties according to the conditions determined by the company holding the rights.

Article 1 Minister of Home Affairs Regulation no. 1 of 1977 concerning Procedures for Applications and Completion of Granting Rights to Parts of Land Management Rights and Their Registration, also determines that the HPL contains the authority to: (a) Plan the designation and use of the land concerned; (b) Use the land for the purposes of carrying out its business ; and (c) Hand over parts of the land to a third party according to the conditions determined by the company holding the rights. Based on these provisions, HPL contains two types of authority, namely: (1) Public Authority, namely planning the use and handing over part of the HPL to third parties; (2) Private Authority, namely the authority to use the land for the purposes of carrying out their duties (not the purpose of granting rights), whose main purpose is to provide land for use by other parties who need it with certain rights. However, in its development there has been a shift in the nature of Public Management Rights towards Civil (Private). Initially HPL functioned as a "manager" shifting towards a "rights" function. Once it becomes a right, it becomes something that is absolutely owned and its use depends on the owner.

The land rights granted above the HPL or called a Land Use Agreement (SPPT) are: (a) Ownership Rights (transmigration area), (b) Building Use Rights, (c) Use Rights. Agreements made between HPL holders and third parties are based on general principles of contract law in Book III of the Civil Code. Article 1338 paragraph (1) in conjunction with Article 1319 of the Civil Code as the basis for the principle of Freedom of Contract in making land use agreements (SPPT). The conditions for the validity of an agreement in Article 1320 of the Civil Code and Article 1339 of the Civil Code are also the basis for making SPT. Agreement of the parties, skills, certain objects and halal causes. The principle of cosexualism, the principle of good faith, the principle of binding force and the principle of Nemoplus Juris. Article 1339 of the Civil Code states that: "an agreement is not only binding for things that are expressly stated in it, but also everything that, according to the nature of the agreement, is required by propriety, custom or law". Agreement.

This Land Use Agreement Letter (SPPT) must be made at the time of the first application for granting HGB over Land Management Rights (HPL). This agreement was born because it was ordered by statutory regulations in the National Land Law (PMNA/Ka BPN No.9 of 1999). This agreement is not just an agreement born due to a mutual agreement/agreement between the parties, but is an agreement born and ordered by the UUPA and its implementing regulations, therefore the legal relationship between the parties and its legal consequences are also determined/ordered by the Law. In this case the holder/recipient of the HPL can hand over the use of the land which is part of this HPL with HGB or Hak Pakai based on SKPT which has obtained the approval of the Head of BPN RI, which must not contain elements that are detrimental to the parties (Regulation. HGB is one of the land rights regulated in Article 16 paragraph (1) of the UUPA, which can be granted on HPL land. Article 35 of the UUPA stipulates that: "Building Use Rights are the right to construct and own buildings on land that is not one's own." . When granting HGB for HPL land, it must be based on SKPT as regulated from the start in Article 22 paragraph (2) PP 40 of 1996 concerning Business Use Rights, Building Use Rights and Land Use Rights which states; granted with a decision to grant rights by the Minister or an appointed official based on the recommendation of the Management Rights holder. 2012. HGB on HPL land occurs from the time it is registered by the Land Office and a document is issued as proof of the right.

Based on Article 36 PP no. 18 of 2021, one of the land that can be granted with HGB is HPL. The HGB period above the HPL is regulated in Article 37 PP No. 18 of 2021 which reads: "Granted for a maximum period of 30 (thirty) years, extended for a maximum period of 20 (twenty) years, and renewed for a maximum period of 30 (thirty) years. After the period for granting, extending and renewing as referred to in paragraph (1) ends, the land with building use rights returns to land directly controlled by the state or land with management rights."

In UUCK Article 129 paragraph (3) in conjunction with PP No. 18 of 2021 Article 41 paragraph (3) states that: "HGB above the HPL period can be given an extension and renewal of rights if they have been used and/or exploited in accordance with the purpose of granting the rights." Furthermore, Article 41 paragraph (1) PP 18 of 2021 states: "A request for an extension of the HGB period can be submitted after the land has been used and utilized in accordance with the purpose of granting the rights or at the latest before the end of the HGB period. "Furthermore, in paragraph (2) applications for HGB renewal are submitted no later than 2 (two) years after the end of the HGB period."

Regulations regarding procedures for extending the HGB period above HPL are regulated in Articles 40 and 41 PP No. 18 of 2021. Where it is explained that the procedure for extending the HGB period above the HPL is based on Article 40 paragraph (1) PP No. 18 of 2021 can be extended or renewed at the request of the HGB holder if it receives approval from the HPL holder and meets the following conditions: (a) The land is still being cultivated and utilized properly in accordance with the conditions, nature and purpose of granting the right. (b) The conditions for granting rights are fulfilled properly by the right holder . (c) The land is still in accordance with the spatial plan. It is not used and/or planned for public purposes .

Article 41 paragraph (4) states: "In the case of building use rights on Management Rights Land, a period of extension and renewal of rights can be granted if the land has been used and exploited in accordance with the purpose for which the rights were granted." Registration at the Land Office to extend or renew building use rights is mandatory . Regulations regarding procedures for extending the term are also regulated in UUCK Article 129 paragraphs (1), (2) and (3) explaining that land rights above management rights at land banks can be granted Business Use Rights, Building Use Rights and Use Rights. If the HGB period for the HPL has expired, it can be extended and renewed if it is used and/or exploited in accordance with the purpose of granting the right . When viewed again from the perspective of the UUPA as the umbrella for national land law, there are inconsistencies. In particular, regarding the procedures for extending and transferring the HGB period over the HPL. PP No. 40 of 1996 was essentially an implementing regulation of the UUPA before it was revoked and replaced by PP No. 18 of 2021 explains that there is no confirmation that a Decree (SK) can be used to extend and renew HGB above HPL. However, Article 129 paragraph (3) UUCK in its regulations can state: "That the SLF (Letter of Functional Eligibility) which has been issued by the HGB holder of the HGB land plot above the HPL is ready to be operated or utilized, the HGB can be extended and renewed." It can be said based on this article that the granting of HGB extensions and renewals can be done on a regular basis even though there is no clear formulation in the law .

PP No. 18 of 2021 as the implementing regulation of UUCK also indicates that SLF can be used as an extension and renewal of HGB which refers to Article 41 paragraph (3) which reads as follows: (a) The right to use buildings on State Land can be granted simultaneously with the extension of the right after received a certificate of functional fitness. (b) Building use rights on land with management rights can be extended and renewed after obtaining a certificate of functional feasibility. Some of these provisions can be said to mean that there is no synchronization and harmonization in PP No. 18 of 2021 with the UUPA, where in the UUPA the procedures for extending and renewing HGB must be carried out in

stages and in accordance with the requirements, the land is still used and utilized properly in accordance with the circumstances, nature and purpose of granting the right and must obtain approval from the HPL holder. Even though in the provisions of PP no. 18 of 2021 also determines the same thing, but the provisions of Article 41 paragraph (3), especially for HGB, allow that after being granted SLF, rights can be extended and renewed. Apart from that, the provisions on Building Use Rights above Management Rights, based on the provisions of Article 37 Paragraph (1) PP Number 18 of 2021, the status of Building Use Rights above Management Rights can be extended and renewed on condition that the land has been used according to its intended purpose and has received approval from the Right holder. Management.

CONCLUSION

Regulations regarding HGB over HPL have undergone changes which were previously regulated in PP No. 40 of 1996 concerning Cultivation Rights, Building Use Rights and Use Rights are now regulated in PP No. 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration . Conformity of HGB above HPL regulations in PP No. 18 of 2021 with the UUPA it can be said that there is no synchronization and harmonization, where in the UUPA the procedures for extending and renewing HGB must be carried out in stages and according to requirements, the land is still used and utilized properly according to the circumstances, nature and the purpose of granting rights and must obtain approval from the HPL holder. Even though in the provisions of PP no. 18 of 2021 also determines the same thing, but the provisions of Article 41 paragraph (3), especially for HGB, allow that after being granted SLF, rights can be extended and renewed.

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